

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Northern States Power Company d/b/a
Xcel Energy for a Certification of Need
to Establish an Independent Spent Fuel
Storage Installation at the Monticello
Generating Plant

FIFTH PREHEARING ORDER

A telephone conference was held before Administrative Law Judge Steve M. Mihalchick on February 3, 2006, on the Motion to Strike or Allow Additional Testimony of Xcel Energy (Xcel).

Thomas P. Harlan and Katherine E. Becker, Madigan, Dahl & Harlan, P.A., 701 Fourth Ave S., Suite 1700, Minneapolis, MN 55415, and Elizabeth Goodpaster, Staff Attorney, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, Saint Paul, MN 55101, appeared on behalf of Minnesota Center for Environmental Advocacy (MCEA) and Minnesotans for an Energy Efficient Economy (ME3).

B. Andrew Brown, Dorsey & Whitney, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, appeared on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel).

Linda S. Jensen, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, Saint Paul, MN 55101, appeared on behalf of the Department of Commerce.

Based on the discussions during the motion hearing, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. Xcel's Motion to Strike the rebuttal testimony of Dr. Gordon Thompson is **DENIED**.

2. The alternative relief of submitting surrebuttal testimony requested by Xcel, the Department, MCEA, and ME3 is **GRANTED**. All parties may file surrebuttal testimony, limited to responses to testimony previously filed by any

other party, no later than February 16, 2006. Testimony containing new material that is not responsive to previously filed testimony will, upon motion, be stricken.

3. The evidentiary hearing set on for February 21, 2006, will begin at 10:00 a.m. at the offices of the Minnesota Public Utilities Commission, 3rd Floor, 121 E. 7th Place, St. Paul, Minnesota.

Dated: February 6, 2006

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

On June 9, 2005, the ALJ issued the first Prehearing Order in this matter. That Order set deadlines of September 16, 2005 and October 14, 2005 for filing direct testimony and November 15, 2005 for filing rebuttal testimony. The schedule was modified in the Third Prehearing Order issued on August 30, 2005. The Third Prehearing Order adjusted these dates, setting the discovery request deadline for January 13, 2006 and the rebuttal testimony deadline for January 27, 2006.

MCEA and ME3 filed rebuttal testimony of Dr. Gordon Thompson on January 27, 2006.

Xcel asserts that much of Dr. Thompson's testimony (Sections II, V and VI, including his estimation of externality costs) cannot be fairly characterized as rebuttal. Sections III and IV of Dr. Thompson's testimony are conceded by Xcel to be responsive to direct testimony, but Xcel claims that those sections are untimely. Xcel maintains that those sections should have been submitted with MCEA's direct testimony on December 16, 2005.

Xcel asserts that allowing Dr. Thompson's testimony will result in severe prejudice, since Xcel lacks an opportunity to respond with written testimony. To remedy this situation, Xcel proposed that Dr. Thompson's January 27, 2006 testimony be stricken, or that the parties be allowed to file responsive testimony by February 16, 2006. The Department agreed with Xcel's characterization of Dr. Thompson's testimony, but expressed a preference for responsive testimony over striking his testimony from the record.

MCEA and ME3 asserted that Xcel was mischaracterizing the nature of the direct and rebuttal phases for testimony in the prehearing orders.

Because the prior orders were somewhat vague as to what matters could be included in rebuttal testimony, and in order to allow a vigorous examination of the facts and opinions expressed in the prefiled testimony, it is most appropriate to receive Dr. Thompson's testimony and to allow Xcel and the Department to file responsive testimony. At the same time, it is appropriate to allow MCEA and ME3 the same opportunity to respond to other testimony filed on or before January 27, 2006.

S. M. M.